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🕒 MARCH 18, 2021 💬 1 COMMENT

Online Learning in a Global Pandemic, *Intimate Details & Prying Government Eyes*: When What Was Once Private is Thrust into the Public Sphere

The Story of KaMauri Harrison

A global pandemic has morphed the traditional in-person classroom into a virtual one, leaving vestiges of strict classroom rules and decorum clashing with home privacy expectations. So is the case of **Ka'Mauri Harrison**, a 9-year-old Louisiana boy suspended for moving a BB gun while on screen during online class. Ka'Mauri's parents and attorney maintain the boy only moved the BB gun to prevent his little brother from accessing it. However, Ka'Mauri's teacher thought the BB gun was a real gun and reported him to the principal. Ka'Mauri was not only suspended from school, but also recommended for expulsion.



Photo by
**Ralston
Smith** on
Unsplash.



Photo by [Lavi Perchik](#) on [Unsplash](#).

Ka'Mauri's parents requested to appeal the suspension decision but were denied by the school board. Louisiana Attorney General Jeff Landry, became involved and issued a letter stating that students recommended for expulsion have a right to appeal. Landry contends **an individual's private home is not an extension of the classroom**. Ka'Mauri's parents then filed a suit against the school board.

The Ka'Mauri Harrison Act

In response to Ka'Mauri's story, the Louisiana legislature unanimously passed a **bill requiring school boards to create discipline policies applicable for online instruction**. The Ka'Mauri Harrison Act requires the discipline policy to define the rules and expectations for virtual instruction while taking "into consideration the students and their families' rights to privacy and other constitutional rights while at home or in a location that is not school property"

Landry **responded in a prepared statement**, noting "[t]he Legislature even unanimously passed a law expressly reaffirming that the home is not school property and discipline policies cannot treat it the same." Yet, neither the legislature nor Landry has defined what "students and their families' rights to privacy" or "other constitutional rights while at home" means within the context of virtual classroom discipline policy.

Students and their Families Rights to Privacy

The Ka'Mauri Harrison Act's instruction that virtual classroom discipline policies shall take into consideration "students and their families' rights to privacy," likely invokes the privacy protections of The Family Educational Rights and Privacy Act (**FERPA**). FERPA is a federal law that protects the privacy of student education records. The new era of the virtual classroom raises questions about what privacy rights exist online for classroom video conferencing as it may put students' **personally identifiable information** and **education records** at risk for exposure. Ka'Mauri Harrison's case is just one example of the risk students face when appearing on camera for virtual lessons.



Photo by [Jimmy Dean](#) on [Unsplash](#).

School districts requiring students to appear on screen and even recording the lessons may be in conflict with students and their families' rights to privacy. **The U.S. Department of Education has been slow in offering guidance on privacy rights** and has only noted that parents may speak with a student's teacher if they are uncomfortable with the use of video during virtual lessons or may ask for their child to appear off camera if the teacher plans to record the lesson. There is no mention of whether a teacher must agree to that request.

The U.S. Department of Education needs to define what privacy rights exist for students in virtual classrooms to guide states and schools in drafting policies for student behavior and discipline.

Other Constitutional Rights while at Home

The Ka'Mauri Harrison Act's mention of "other constitutional rights while at home" may be referring to Fourth Amendment protection from illegal searches. In *Kyllo v. United States*, where it was held that thermal imaging of the home was considered a search, Justice Scalia famously wrote that in the home, "all details are intimate details, because the entire area is held safe from prying government eyes." Virtual classrooms have opened the home to the watchful eye of teachers. Subsequently **teachers have complained** about seeing parents undressed and using cannabis during virtual class time. Teachers and school administrators have even went as far as to involve police over what they have observed in a student's home.



Photo by **Dayne Topkin** on **Unsplash**.

However, it is unclear if what teachers and **administrators are observing** and even recording in students' homes can be considered an illegal search. This issue is raised in the case of **Isaiah Elliot**, a 12-year-old Colorado boy who like Ka'Mauri, was also suspended for having a toy gun on camera. In Isaiah's case, his virtual lesson was recorded and shown to police, who then went to his home. In response to whether recorded virtual lessons shown to police are in fact an illegal search of the home, one constitutional rights group has created an **"Opt Out" form**. The form was created for parents to sign and return to the school, stating that their student's participation in the virtual classroom does not permit the school district or other government official to conduct a search by video surveillance.

The Ka'Mauri Harrison Act does not define what constitutional rights schools need to consider for virtual learning but if individual's private home is not an extension of the classroom, it is likely subject to more protection.

Nationwide Implications from The Ka'Mauri Harrison Act

In Louisiana, the state legislature stepped in to remind schools that the home differs from classroom and students and their families are entitled to privacy rights. While schools nationwide grapple with the same issue, privacy violation litigation may arise because there is no clear nationwide standard. That could trigger more state-based legislation, like the Ka'Mauri Harrison Act, across multiple states, creating a patchwork of privacy rules that govern virtual learning. However, the solution may be in updating FERPA, to create a minimum uniform standard that meets the privacy needs of students across the nation. Even then, courts may need to interpret online education privacy that potentially conflict with constitutional rights.

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1 Comment

Michael Angelo Tata says:

March 19, 2021 at 12:16 am

Wow wow wow: is this where Kyllo has led us? I think of Scalia's effervescent commentary on the "lady of the house's sauna and bath" and his never wavering focus on the sanctity of the home (cars, not so much). It's unclear where to draw spatial boundaries in a pandemic, especily when the public and the private have merged on so many levels. We're way beyond a situatuon in which Am IV standards like "curtilage" make any sense (although maybe there is digital curtilage?). The LA legislation is critical, and I, too, wonder how FERPA will change to meet the needs of Rona World. Thank you for sharing these two vital stories.

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